

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND E. LOPEZ,

No. C 13-0649 TEH (PR)

Petitioner,

ORDER OF DISMISSAL

v.

GREG D. LEWIS, Warden,

Respondent.

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On February 13, 2013, Petitioner Raymond E. Lopez, an inmate at Pelican Bay State Prison, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition contained exhausted and unexhausted claims. On the same date, Petitioner moved for a stay of his petition while he exhausted his unexhausted claims in state court.

On March 19, 2013, the Court issued an Order Denying without prejudice Petitioner's motion for a stay. Doc. #4. The Court indicated that, as it was written, Petitioner's motion did not meet the requirements to stay his petition and explained the two types of stays that were available to him. The Court granted Petitioner twenty-eight days in which to pursue one of the two options for a stay or to inform the Court that he wished to proceed only on the exhausted claims that were presented in his petition.

After twenty-eight days Petitioner had not filed a renewed motion for a stay, informed the Court that he wished to proceed only on his exhausted claims, or communicated with the Court in any manner.

On April 23, 2013, the Court issued an Order granting Petitioner fourteen more days in which to respond. Doc. #5. In the Order, the Court explained that the general rule is that a federal district court must dismiss a mixed petition containing exhausted and unexhausted claims but that the court may stay a mixed petition to allow the petitioner to exhaust the unexhausted claims. Rose v. Lundy, 455 U.S. 509, 522 (1982); Rhines v. Weber, 544 U.S. 269, 277 (2005). Thus, if Petitioner did not file, within fourteen days from the date of the Order, a re-newed motion for a stay or inform the Court that he wished to proceed only with his exhausted claims, his mixed petition would be dismissed without prejudice.

Fourteen days have passed and Petitioner has not filed a re-newed motion for a stay or communicated with the Court in any manner. Therefore, his petition is dismissed without prejudice to re-filing when his claims are exhausted. The Clerk shall close the file.

IT IS SO ORDERED.

DATED 05/13/2013



THELTON E. HENDERSON
United States District Judge

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